

REMARKS

In the Office Action mailed February 3, 2005, the Examiner rejected claims 1-5, 7-9 and 11-21 and objected to claims 6 and 10, but indicated claims 6 and 10 as being allowable if rewritten in independent form. Applicants thank the Examiner for an indication of allowable subject matter. By way of the foregoing amendments and the markings to show changes, applicants have amended claims 1, 6, 12 and 21 and added new claims 22-26. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

I. Double Patenting

The Office Action suggested that claims 16 and 21 were substantial duplicates of each other. Applicants have amended claim 21 to depend from claim 20 to address this issue..

II. Drawings

The Office Action objected to the drawings suggesting that the elements of claim 6 were not shown. Applicants contend that Fig. 5 and the discussion starting a page 13, paragraph 55 and going through paragraph 59 show and discuss these elements. Applicants believe that this may have been overlooked and request that, if any further issues with the subject matter of claim 6 remain, the Examiner phone the undersigned.

III. Claim Rejection under 35 USC 102 and 103

The Office Action rejected claims 1-5, 7-9 and 11-21 as being anticipated by or obvious in view of one or more of the following references: Knoblock (5,487,591); Rink (5,092,942); Krassilnikov (US 2003/0197296); Nagamitsu (US 2002/0060492); Leistra (5,782,537). Applicants traverse these rejections and suggest that the claims were allowable as originally submitted. To expedite prosecution, Applicants have amended claims 1 and 12 and suggest that claims 1 and 12 and their dependents are novel and non-obvious since none of the references of record, alone or in

combination, suggest the subject matter of those claims. Applicants have not amended claims 17-20 and traverse the rejections of those claims with particularity below.

Claim 17 and 18

The Office Action rejected claims 17 and 18 as being obvious over Knoblock in view of Nagamitsu and Leistra. Applicants contend that these rejections are legally inadequate to sustain the asserted obviousness rejection.

The Court of Appeals for the Federal Circuit, in the case of In re Lee, 61 USPQ2d 1430 (CAFC 2002), wrote:

("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.");...The need for specificity pervades this authority. See, e.g., In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed"); In re Rouffet, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) ("even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious."); In re Fritch, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (the examiner can satisfy the burden of showing obviousness of the combination "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references").

Applicants contend that the rejection of claims 17 and 18 is legally inadequate for at least three reasons. First, there is no indication that the motivation provided by the Office Action for combining Nagamitsu with Knoblock comes from the references or the prior art and the motivation itself lacks specificity. Second, the Office Action does not provide a motivation, much less a specific motivation, for combining Leistra with Knoblock and Nagamitsu. Third, the lack of motivation and lack of specificity of

motivation for the aforementioned rejections ultimately results in a combination that the skilled artisan would not be able to create without the assistance of hindsight.

In combining, Nagamitsu with Knoblock, the Office Action suggests, at page 6, that, "it would have been obvious...to add a plurality of ribs to the attachment locations disclosed by Knoblock. Such a modification would further reinforce the attachment location area and prevent the seat back from pulling away from a structure to which it is attached." Applicants contend that this motivation is flawed. Applicants find no indication by the Office Action or in Nagamitsu that the ribs of Nagamitsu provide the type of reinforcement in the manner indicated by the Office Action. Rather, the motivation provided by the Office Action appears to be improperly taken from Applicants disclosure.

The Office Action further suggests, at page 8, that it, "would have been obvious to one of ordinary skill in the art at the time of the instant invention to place two seat backs disclosed by Knoblock et al. side by side as taught by Leistra et al. Such a modification would involve mere duplication of parts." Applicants contend that this statement fails to provide any motivation at all for combining Leistra with Knoblock and Nagamitsu. The office action statement that, "Such a modification would involve mere duplication of parts" is not a motivation. The statement provides no suggestion or reason that the skilled artisan would be motivated to place office chair seat backs, such as those in Knoblock and Nagamitsu, in a side by side relation suitable for an automotive seat back as claimed in claims 17 and 18. As such, Applicants contend that the Office Action has failed to assert a prima facie case of obviousness against claims 17 and 18.

Applicants further contend that the improper combinations of Knoblock, Nagamitsu and Leistra results in a combination that the skilled artisan would be very unlikely to arrive at without the assistance of improper hindsight as was used in the Office Action. Both, Knoblock and Nagamitsu are directed toward office chairs. As such, the asserted rejection would require the skilled artisan to, without the assistance of Applicants disclosure, modify a first office chair design, duplicate it, with a second office chair design and then take the redesigned office chair design and apply it to automotive seatback technology. This combination would be particularly difficult since Applicants find no specific assertion in those references

that the “ribs” of Nagamitsu would be suitable for counteracting forces typically encountered by an automotive seatback as claimed in claim 17 and since Applicants find absolutely no motivation to place the office chair designs of Knoblock and Nagamitsu in an automotive vehicle.

Claim 20

The MPEP 2143.03 reads that, “To establish prima facie obviousness...all the claim limitations must be taught or suggested by the prior art.” In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Moreover, the MPEP states that, “All words in a claim must be considered in judging the patentability of that claim against the prior art.” In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Applicants contend that the Office Action fails to establish such a prima facie case.

The Office Action, in rejecting claim 20, suggests that Krassilnikov discloses, “a method and apparatus for producing molded “seat backs” (paragraph [124]) with a gas assisted molding station.” The Office Action goes on to suggest that, “it would have been obvious ... to form the seat back system disclosed by Knoblock with the gas assisted injection molded process taught by Krassilnikov.”

The rejection of claim 20 fails to properly assert a prima facie case of obviousness. In particular, there is no indication by paragraph 124 that Krassilnikov is using gas assist injection molding. The present application discusses gas assist injection molding as follows:

According to one preferred embodiment, the seat back is formed by injection molding and the ribs are formed during injection molding using, in particular, gas assist injection molding. During such a process, a molten plastic polymer resin (preferably formed of one of the materials discussed herein) is injected into a mold of an injection molding machine. Then, pressurized gas, preferably, an inert gas, such as nitrogen or the like, is introduced into the mold such that portions of resin are urged into channels within the mold. Thereafter, gas pressure is maintained as the resin cools and hardens thereby forming the seat back with the channel forming ribs as well as the other ribs, walls or the like of the seat back.

Applicants find no indication that Krassilnikov uses or discloses gas assist injection molding.

Additionally, Applicants find no indication that Krassilnikov employ gas assist injection molding for forming ribs as recited in claim 20. As such, Applicants contend that the Office Action fails to assert a prima facie case of obviousness against claim 20 of the present application.

In view of the above, Applicants request that the rejections of claim 17-20 be withdrawn.

Furthermore, Applicant points out that it would likely be improper to present a final rejection of claims 17-20 on a grounds alternative to that already presented since applicants have not amended those claims in a manner, which would necessitate such alternative grounds. In particular, the MPEP reads:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee..." MPEP 706.07(a)

Thus, any new grounds of rejection, "that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee..." would be improper.

VI. New Claims

Applicants have added new claims 22-25 to address various aspects of the invention of the present application. Applicants point out that new claim 26 is previously pending claim 6 in independent format and that claim 26 should then be allowable since the Office Action indicated the allowability of claim 6 in independent format.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants intend to file a continuation application to pursue the breadth of the

claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

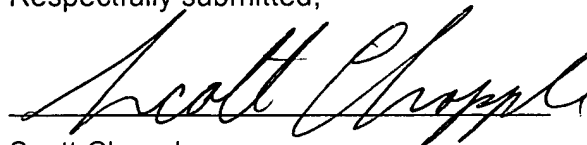
CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

Dated: 5 March, 2005



Scott Chapple
Registration No. 46,287
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street
Suite 210
Pontiac, MI 48342
(248) 292-2920

Customer No. 25215